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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/505,214	10/26/2004	Martin Vigoureux	Q82801	2390

23373   7590   08/14/2008
SUGHRUE MION, PLLC
2100 PENNSYLVANIA AVENUE, N.W.
SUITE 800
WASHINGTON, DC 20037

EXAMINER
JAGANNATHAN, MELANIE

ART UNIT	PAPER NUMBER
2619	

MAIL DATE	DELIVERY MODE
08/14/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

	Application No.	Applicant(s)
Advisory Action **Before the Filing of an Appeal Brief**	10/505,214	VIGOUREUX ET AL.
	Examiner	Art Unit	
	MELANIE JAGANNATHAN	2619	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED <u>18 July 2008</u> FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

   a) ☒ The period for reply expires <u>3</u> months from the mailing date of the final rejection.

   b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

      Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will <u>not</u> be entered because

   (a)☐ They raise new issues that would require further consideration and/or search (see NOTE below);

   (b)☐ They raise the issue of new matter (see NOTE below);

   (c)☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

   (d)☐ They present additional claims without canceling a corresponding number of finally rejected claims.

      NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:

   Claim(s) allowed: _____.

   Claim(s) objected to: _____.

   Claim(s) rejected: <u>1,2,4-8</u>.

   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
    See Continuation Sheet.

12. ☐ Note the attached Information *Disclosure* Statement(s). (PTO/SB/08) Paper No(s). _____

13. ☐ Other: _____.

/Melanie Jagannathan/
Examiner, Art Unit 2619
August 9, 2008

U.S. Patent and Trademark Office

PTOL-303 (Rev. 08-06)   **Advisory Action Before the Filing of an Appeal Brief**   Part of Paper No. 20080810

 Continuation of 11. does NOT place the application in condition for allowance because: Applicant argues Doverspike discloses the restoration path which is selected from a graph of links in the network which are physically diverse from the service path. (Col. 2, lines 11-13). Therefore, Doverspike teaches selecting a restoration path from the physical interconnected segments. Such path is spatial and not spectral. Applicant argues Doverspike does not teach or suggest selecting the restoration path by selecting "the wavelength or the wavelengths to be used successively. Examiner respectfully disagrees. Doverspike discloses in column 2 that the restoration path is physically diverse from the service path. However, this does not mean the path is not spatial or spectral. In fact, Doverspike goes on to disclose in column 4, that in other words, the restoration path and the service connection path should not belong to a group of links (referred to in the art as a "shared risk link group") sharing some common infrastructure that could subject the links to a possible single failure. Furthermore, Doverspike discloses restoration paths being optical links in fiber spans in the rest of column 4. Thus, the rejection is proper. Additionally, the restoration paths not being in the same shared risk link group to provide for optimal failure restoration does not preclude the path supporting the spectral route as Applicant contends. Examiner uses the broadest reasonable interpretation of supporting the route as restoring the route. In light of the claim language, the rejection is maintained. Applicant argues Examiner addresses storing the information needed for the calculation of the service and restoration paths in the destination node but the Examiner does not address the computation of the service and restoration paths in the destination node. Therefore, Applicants respectfully request the Examiner to properly address the computation of the service and restoration paths in the destination node in the next Office Action. Examiner regrets any improper explanation on her part. Examiner respectfully maintains that Doverspike's disclosure of storing the information needed for calculation of the paths in the destination node does teach computing the paths. Doverspike discloses in column 7, lines 30-33, all of the information needed for the computation of the service and restoration paths could be maintained at every OXC node. This would require maintaining the entire two-dimensional array at each OXC node. Thus, the rejection is maintained.